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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: Nebraska Service Center

Date: JUN 21 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rose
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The record will be remanded.

The petitioner is described as a [REDACTED] It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a priest.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been continuously carrying on a religious vocation for the two-year period immediately preceding the filing of the petition. The director found that the record was insufficient to establish that the beneficiary was engaged in the vocation during his stay in the United States in B-2 visitor classification from August 1999 to February 2000.

On appeal, counsel for the petitioner submitted a written brief arguing that the period of unpaid service with the petitioner was not interruptive of the beneficiary's vocation as a priest.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is described as an independent Sikh temple with a current membership of approximately 55 families. The petitioner filed the Form I-360 visa petition on January 23, 2001. Therefore, the two-year qualifying period is from January 23, 1999 to January 23, 2001.

The beneficiary is a native and citizen of India. It was stated that the beneficiary has been trained as a priest since childhood. He was last admitted to the United States on August 20, 1999, as a B-2 visitor. The record reflects that the beneficiary was granted R-1 classification, as a nonimmigrant religious worker authorized for employment by the petitioner, valid from August 19, 2000 to August 19, 2003. It was claimed that the beneficiary served voluntarily as a priest in the United States from August 1999 to August 2000, when he commenced regular employment with the petitioner.

On review, it is concluded that an interruption in regular employment or service to an individual religious organization by an ordained member of the clergy is not necessarily interruptive of the practice of a vocation. See Matter of Z-, 5 I&N Dec. 700 (Comm. 1954). However, the record is insufficient to establish eligibility for the benefit sought. The record will be remanded to consider additional eligibility criteria.

A petitioner also must establish that the beneficiary is qualified as a minister as defined in these proceedings. 8 C.F.R. 204.5(m)(3). To establish that an alien is qualified in a religious position and has been carrying on such a position, acceptable evidence includes a letter from a Superior or Principal of the denomination in the United States. Matter of Varughese, 17 I&N Dec. 399 (BIA 1980).

In this case, the petitioner asserted that the beneficiary has been a Sikh priest for an unstated amount of time and further that he comes from a family with a tradition of serving as priests. The petitioner, however, has not submitted verification of this claim from an official of the religious denomination in the United States. The statement from an official of the individual temple is considered, but is insufficient to satisfy the burden of proof. See also Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

A petitioner also must establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition. 8 C.F.R. 204.5(m)(1). In the case of special immigrant ministers, the alien

must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986).

Here, the petitioner has not claimed or established that the beneficiary was solely engaged in the vocation of a priest for at least the two years preceding the filing of the petition.

The petitioner also must demonstrate that a qualifying job offer, specifying the terms of remuneration and demonstrating that the alien will be solely engaged in a religious vocation, has been tendered. 8 C.F.R. 204.5(m)(4).

Here, the petitioner has not stated the terms of remuneration or shown that the beneficiary would be solely engaged in a religious vocation in the United States.

A petitioner also must demonstrate its ability to pay the proffered wage by submitting the temple's annual reports, federal tax returns, or audited financial statements. 8 C.F.R. 204.5(g)(2). The petitioner has not satisfied this requirement.

The record will be remanded to allow the petitioner to supplement the record and for the issuance of a new decision consistent with the above.

ORDER: The record is remanded.